

SUPREME COURT OF SOUTH DAKOTA

State v. Condon

2007 SD 124 (2007) · No. No. 24336 · Decided December 5, 2007

SUMMARY

The Supreme Court of South Dakota affirmed Karyl Michelle Condon’s conviction for grand theft and the denial of her motion for a new trial. The court held that the trial court properly noted witnesses’ in-court identifications, allowed lay testimony concerning the defendant’s and witnesses’ perceived ethnicity, and excluded an unsworn handwritten statement under the residual hearsay exception. The court also applied abuse-of-discretion and related standards in reviewing the evidentiary rulings and new-trial decision.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	December 5, 2007
DOCKET	No. 24336
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of conviction for grand theft and the denial of a post-trial motion for a new trial based on newly discovered evidence.
STANDARD OF REVIEW	Constitutional claims are reviewed de novo. Evidentiary rulings, admission of hearsay, and denial of a motion for a new trial are reviewed for abuse of discretion; factual findings are reviewed for clear error, while legal conclusions are reviewed de novo. The appellate court defers to the trial court's credibility determinations when the trial court observed the witnesses.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential
PARTIES	Karyl Michelle Condon v. State of South Dakota

TOPICS

- criminal procedure
- evidence
- hearsay
- appellate procedure
- fourteenth amendment

PRACTICE AREAS

Criminal law

Evidence

Criminal procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by noting for the record the witnesses' in-court identifications of Condon.
2. Whether allowing testimony concerning Condon's nationality and the witness's ability to distinguish American Indians from persons of Mexican descent violated Condon's constitutional rights or constituted inadmissible or prejudicial evidence.
3. Whether the trial court abused its discretion by refusing to admit an unavailable inmate's unsworn handwritten statement under the residual hearsay exception.
4. Whether the trial court abused its discretion by denying Condon's motion for a new trial based on newly discovered evidence under SDCL 15-6-59(a)(4).

HOLDINGS

1. The trial court did not err by noting the in-court identifications because the notation merely preserved facts occurring at trial for appellate review and did not constitute judicial notice, testimony by the judge, or improper bolstering of the witnesses.
2. The questioning about Condon's nationality and the witness's ability to distinguish American Indians from persons of Mexican descent did not violate due process and was admissible lay testimony relevant to identification.
3. The circuit court did not abuse its discretion by refusing to admit the unavailable inmate's unsworn handwritten statement because it lacked equivalent circumstantial guarantees of trustworthiness.
4. The circuit court did not abuse its discretion in denying Condon's motion for a new trial because the proffered evidence was not sufficiently credible and would not probably have resulted in an acquittal.

KEY QUOTATIONS

"Rather, we conclude that the trial court merely established for the record facts that occurred at trial the in-court identifications of Condon by Comparan and Reta that could not otherwise be observed on review by this Court." (¶24)

"A motion for a new trial based on new evidence requests "extraordinary relief."" (¶43)

FACTUAL BACKGROUND

A jewelry theft occurred at Nikki's La Mexicana grocery store in Sioux Falls. A witness saw a woman leave the store with jewelry, followed a blue Ford Taurus, and later identified Condon from a six-person photo lineup and in court. Condon was convicted, but after trial she presented information from fellow inmates suggesting that Latasha Rodriquez, who allegedly resembled Condon, committed the theft. The circuit court found the new evidence and its circumstances suspicious and lacking credibility.

PROCEDURAL HISTORY

A Minnehaha County grand jury indicted Condon for grand theft. A jury found her guilty on January 25, 2005, and she later pleaded guilty to a habitual-criminal information. After she was apprehended in June 2006, Condon moved for a new trial based on alleged newly discovered evidence identifying another woman as the thief. The circuit court denied the motion, refused to admit an unsworn handwritten statement under the residual hearsay exception, and sentenced Condon to eight years in prison with one year conditionally suspended. The South Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Asmussen, 2006 SD 37, ¶¶11, 13, 713 N.W.2d 580, 586
- State v. Dillon, 2001 SD 97, ¶12, 632 N.W.2d 37, 43
- State v. Stanga, 2000 SD 129, ¶8, 617 N.W.2d 486, 488
- Matter of R.S.S., 474 N.W.2d 743, 749 (S.D. 1991)
- State v. Runge, 2006 SD 111, ¶9, 725 N.W.2d 589, 592
- State v. Piper, 2006 SD 1, ¶84, 709 N.W.2d 783, 815
- State v. Burtzlaff, 493 N.W.2d 1, 4-5 (S.D. 1992)
- State v. Crawford, 2007 SD 20, ¶14, 729 N.W.2d 346, 349
- State v. Perovich, 2001 SD 96, ¶11, 632 N.W.2d 12, 15
- State v. Sonen, 492 N.W.2d 303, 307 (S.D. 1992)
- United States v. Morrow, 925 F.2d 779, 781 (4th Cir. 1991)
- United States v. Capozzi, 883 F.2d 608 (8th Cir. 1989)
- State v. Jacob, 574 N.W.2d 117 (Neb. 1998)
- State v. Privat, 556 N.W.2d 29, 35-36 (Neb. 1996)
- State v. Rybolt, 650 P.2d 1258, 1263-64 (Ariz. Ct. App. 1982)
- State v. Diaz, 688 P.2d 1011 (Ariz. 1984)
- Echols v. State, 517 S.W.2d 18, 22-23 (Tenn. Ct. App. 1974)
- State v. McMurry, 513 P.2d 953, 957 (Ariz. Ct. App. 1973)
- Brown v. Board of Education, 347 U.S. 483, 495 (1954)
- State v. Guthrie, 2001 SD 61, ¶36, 627 N.W.2d 401, 416
- State v. Andrews, 2001 SD 31, ¶17, 623 N.W.2d 78, 83
- Atkins v. Stratmeyer, 1999 SD 131, ¶17, 600 N.W.2d 891, 897
- Gerlach v. Ethan Coop Lumber Ass'n, 478 N.W.2d 828, 831-32 (S.D. 1991)
- State v. No Heart, 353 N.W.2d 43, 48 (S.D. 1984)
- United States Fire Ins. Co. v. Dace, 305 N.W.2d 50, 56 (S.D. 1981)
- Koenig v. Weber, 84 S.D. 558, 174 N.W.2d 218, 224 (1970)

- Moberg v. Scott, 42 S.D. 372, 175 N.W. 559, 561 (1919)
- Gartner v. Mohan, 41 S.D. 406, 170 N.W. 640, 641 (1919)
- Shearn v. Anderson, 74 S.D. 41, 48 N.W.2d 821, 824 (1951)
- State v. Leehman, 2 S.D. 171, 49 N.W. 3, 6 (1891)
- State v. Isaacson, 8 S.D. 69, 65 N.W. 430, 431 (1895)
- Olson v. Aldren, 84 S.D. 292, 297, 170 N.W.2d 891, 894 (1969)
- State v. Hall, 353 N.W.2d 37, 43 (S.D. 1984)
- State v. Dale, 66 S.D. 418, 284 N.W. 770, 771 (1939)
- Palmer v. Schurz, 22 S.D. 283, 117 N.W. 150, 153 (1908)
- State v. Turner, 53 S.D. 523, 221 N.W. 251, 252 (1928)
- State v. Work, 47 S.D. 649, 201 N.W. 553 (1924)
- Territory v. Pratt, 6 Dak. 483, 43 N.W. 711 (1889)
- Vermillion v. Williams, 84 S.D. 589, 174 N.W.2d 331, 333 (1970)
- Morton v. Holscher, 60 S.D. 50, 243 N.W. 89 (1932)
- State v. Nuzum, 58 S.D. 6, 234 N.W. 665 (1931)
- Pearson v. Adams, 279 N.W.2d 674, 677 (S.D. 1979)
- State v. Luna, 378 N.W.2d 229, 238 (S.D. 1985)
- State v. Gehm, 1999 SD 82, ¶¶13, 15, 600 N.W.2d 535, 540

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